

# WRONG SIGNAL: THE HINDU EDITORIAL ON KERALA HIGH COURT'S MEDIAONE JUDGMENT

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The Kerala High Court judgment upholding the Government's revoking the broadcasting permission given to Malayalam news channel MediaOne is plainly wrong. The I&B Ministry did not renew the channel's permission to uplink and downlink signals after the Union Home Ministry declined security clearance. The company and some employees challenged the action. The court seems to have endorsed the Government's stand that it was a national security issue and, therefore, there was no need to observe the principles of natural justice. The Government claimed there were sufficient reasons, even though they were not disclosed. It is unfortunate that the court chose to accept the submission of documents in a sealed cover and agree with the authorities that there were intelligence inputs that warranted the denial of security clearance, without the petitioners being shown the contents. The court's decision goes against emerging jurisprudence that any restriction on fundamental rights must not only be reasonable, as permitted in the Constitution, but also withstand the test of proportionality. In this case, broadcasting involves the inter-connected rights concerning media freedom, freedom to disseminate information and the freedom to consume information. All these fall under the framework of freedom of speech and expression. The court seems to have accepted the restriction without examining its reasonableness in any way. It has negated not only the channel's right to broadcast but also its viewers' right to know.

It is astounding that the court dismissed the precedent set in a recent case that national security cannot be used as a pretext to avoid any judicial examination of restrictions imposed by the state. Raising the spectre of national security did not give a free pass to the Government, the court had noted in the case involving allegations of the use of Pegasus, a spyware, against citizens. By claiming that it was in a case that involved the 'right to privacy' and not germane to the MediaOne case, the judge seems to have erred. The need for circumspection against the bogey of national security being raised to deny or curtail fundamental rights is a general principle, and not confined to a particular right. Further, it is plainly unacceptable that the much-derided form of 'sealed cover' justice is being used as an aid to adjudication. Even though courts recognise that the scope for judicial review in matters of national security is limited, any claim that a particular action was based on that ground ought to be substantiated by the Government, even if it is reluctant to disclose all details. If this practice of using confidential intelligence claims to revoke the permission given to a channel to operate is encouraged, freedom of the media will be in great peril.

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